

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE

WRIT PETITION NO 1378 OF 1993

Abdul Razaque Ismail,
Occupation-business,
Residing at Islampura
Ward H. No. 234, Malegaon,
District Nasik.

..Petitioner
Orig.Deft.

V.

Mariambai Abdul Sattar,
Occupation Household,
Reisiding at Hazar Kholi,
Malegaon, Dist. Nasik.

..Respondent
Orig.Plaintiff.

Mr. A.N. Mulla for the petitioner.

Mr. S.M. Gorwadkar for the respondent.

CORAM : ANOOP V.MOHTA J.

DATE : 21ST JULY, 2005.

ORAL JUDGMENT

. The petitioner is the tenant. The respondent is the landlord. The monthly tenancy of the premises in question has been Rs. 70/- per month. As there was irregular payment of rent, demand notice dated 9/7/1981, was issued and the tenancy was terminated on the ground of default. There was no reply to the said notice of demand. The respondent-landlord therefore, filed Regular Civil Suit No.435/1981 on 14/9/1981, in the

Court of Civil Judge, J.D. Malegaon (trial Court) for eviction on the said ground. The petitioner-tenant however, undisputedly filed an application for fixation of standard rent No. 99/1981, within one month from the receipt of the notice. The suit was contested.

2. The trial Judge, after considering the material on the record, by its judgment and decree dated 22nd September, 1989, decreed the suit by holding that the petitioner-defendant committed default, in depositing the rent regularly. Therefore, the decree for arrears of rent of Rs. 2400/- was passed. By the same order, the standard rent at the rate of Rs. 80/- per month has been fixed. It appears from the record, as per trial Court, the interim rent was also fixed at the rate of Rs. 50/- per month, Exh.6 by order dated 6/10/1987 on M.A. No 99/1981.

3. The appellate Court i.e. the Additional District Judge, Malegaon, by the impugned judgment and decree dated 18th February, 1993, dismissed the appeal and confirmed the finding of the trial Court. Therefore, the present writ petition.

4. Heard the learned Counsel for the parties. One thing which is missing in the reasoning of the appellate Court is that there is no reference or consideration given to the M.A.No. 99/81, which was filed by the tenant within one month from the receipt of the notice in question. Considering the view taken by the Bombay High Court, on the basis of provision of Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (for short Bombay Rent Act) section 11(3), 12(3) and (b), the protection to the tenant from eviction on the ground of default under these provisions, if the case is made out by the tenant, it decide the substantial rights of the parties. In the present case undisputedly the application was filed for fixation of the standard rent.

5. The necessary reasoning, after considering the regular irregular deposit from the date of order is essential, as that goes to the root of the matter. In absence of this reasoning, it is difficult to consider the rival contentions raised by the parties.

6. Therefore, without going further into this controversy and there is nothing to substantiate or borne out from the record any thing else, but the aspect

of available protection to the tenant under the Bombay Rent Act and as rightly conceded by the Counsel appearing for both the parties. I am also of the view, that the matter needs to be remitted back for reconsideration on all aspects of application No. 99/81 and related issues, under the Bombay Rent Act.

7. For the above reasons, the impugned Judgment dated 18/2/1993, passed by the appellate Court in Civil Appeal No. 484/1989 is quashed and set aside. The matter is remitted back to the Additional District Judge, Malegaon. The appellate Court is hereby directed to dispose of the appeal within six months. In view of this, the writ petition is allowed. No order as to cost.

[ANOOPI V. MOHTA, J.]